

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

W. R. GRACE & CO., et al.¹

Debtors.

)
) Chapter 11
)
) Case No. 01-01139 (JKF)
) Jointly Administered
)
)

**NOTICE OF PLAN PROPONENTS' SUBSTANTIVE OBJECTIONS TO PHASE I
TRIAL EXHIBITS**

In accordance with the Court's May 5, 2009 Third Amended Case Management Order (Docket No. 21544) ("Third Amended CMO"), the Plan Proponents² hereby submit a list of designated exhibits for which the Plan Proponents have both general and specific objections (Exhibit A). On June 8, 2008, the parties³ submitted lists of exhibits they intend to use during

¹ The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co. Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., GC Limited Partners I, Inc., (f/k/a Grace Cocoa Limited Partners I, Inc.), GC Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc. GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation., W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (F/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc., E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

² The Plan Proponents means the Debtors, the Asbestos PI Committee, the Asbestos PI FCR, and the Equity Committee.

³ The pertinent parties are: Zurich Insurance Company and Zurich International (Bermuda) Ltd., Fireman's Fund Insurance Company, Allianz S.P.A., F/K/A Riunione Adriatica Di Scurta, and Allianz SE, F/K/A Allianz (Continued...)

the Phase I trial commencing on June 22, 2008. As set out below, many of the exhibits, however, have numerous evidentiary problems, and do not qualify for admission under the Federal Rules of Evidence. The Plan Proponents expressly reserve the right to object to any of the listed exhibits on any basis not specifically included in this notice.

A. General Objections

The Plan Proponents object to the exhibits for the following reasons:

Relevance: The Phase I hearing will address the following issues: (1) does the plan affect the rights and obligations of the Insurers, as Insurers, to assert available defenses in coverage of disputes other than (i) assignment of the Insurance Rights; and (ii) the rights of the Insurers as parties to Reimbursement Agreements; (2) the standing of the Debtors' Insurers, as Insurers, to assert and/or be heard on objections to confirmation of the Joint Plan which do not involve their economic rights; and (3) the impairment of the Creditors in Class 9. (Third Amended CMO at 1-2) For the Court to decide these Phase I issues, no evidence or testimony is necessary. (*See* Plan Proponents' Pre-Trial Brief (Docket No. 22021)) Thus, the Plan Proponents object to the listed exhibits on the basis that they are not relevant to the legal decisions the Court must make in the Phase I hearings.

Testimonial Foundation and Authenticity: The parties have attached a number of non-Grace documents, sent to and from non-Grace employees. Because the individuals who have knowledge of these documents will not be appearing at the hearing, the parties will not be able to provide the requisite foundation for these documents. The parties also have attached a number of documents containing unidentified handwriting. Because the parties will not be able to identify

Aktiengesellschaft, GEICO/Republic/Seaton, General Insurance Company of America, Federal Insurance Company, CNA Companies, Bank Lender Group, AXA Belgium, and Arrowood Indemnity.

who drafted the handwriting in question (and, in many cases, explain what it means), the Plan Proponents object to any document containing handwriting on the basis of testimonial foundation. Further, the parties have attached a number of incomplete documents. (*See, e.g.*, Arrowood Exhibits A-1 and CNA Exhibits 17I, 18A, 18D, and 18E) These incomplete documents, too, are inadmissible. To the extent possible, the Plan Proponents have engaged in negotiations with objecting parties and attempted to reach stipulations as to authenticity in the event the Court deems any of these documents relevant over the Plan Proponents' objections, to Phase I. The Plan Proponents will continue to negotiate such stipulations.

Hearsay: The Plan Proponents further object to many of the exhibits on the basis of hearsay. Many of the documents listed on Exhibit A hereto are out-of-court statements apparently offered for the truth of the matter asserted. The parties have not shown that these documents qualify under any exceptions to the hearsay rule. For instance, with respect to deposition transcripts, the objectors have not shown that the declarants in these documents are unavailable to testify at the Phase I hearing. And, the parties have attached documents neither created by nor sent to a Grace employee. Accordingly, the Plan Proponents reserve all rights to object to any document offered in violation of the hearsay rule.

B. Specific Objections

In addition to the General Objections set forth above, the Plan Proponents further object to the following:

Non-Grace Documents: The Plan Proponents object to the use of non-Grace documents on the basis of relevance, hearsay, foundation, and authenticity. (*See, e.g.* Arrowood Exhibit A-10, Arrowood Exhibit A-11, CNA Exhibits 6I-6J, and CNA Exhibit 6O)

Insurance Policies: The Plan Proponents object to documents relating to insurance policies on the basis of relevance, completeness, inclusion of extraneous material, authenticity,

and inclusion of composite material. (*See, e.g.* Arrowood Exhibits A1-A2, AXA Belgium Exhibits 1-3, Certain Insurers Exhibits 1-38, CNA Exhibits 17-19 (including all subparts), Federal Insurance Exhibits 1-16, GEICO Exhibits GRS 8-16, General Insurance Company Exhibit 1A, and Zurich Exhibits 1-12)

Settlement Documents: The Plan Proponents object to documents as inadmissible under Federal Rule of Evidence 408. (*See e.g.* Arrowood Exhibit A-4, GEICO Exhibits GRS, Insurers Combined Exhibit I-2 at Exhibit 10, and Insurers' Combined Exhibits I-3, and certain deposition exhibits if offered)

Court Documents: The Plan Proponents object to court documents as irrelevant and hearsay. (*See, e.g.* Arrowood Exhibits A-6 - A-8, A-13 - A16, A-27 - A-28, Bank Lender Group Exhibit 1, CNA Exhibits 6-14 (including all subparts), GEICO Exhibit 7, and Insurers' Combined Exhibits I-9 - I-15)

Deposition Transcripts: The Plan Proponents object to any use of the listed deposition transcripts as irrelevant and hearsay, including CNA Exhibits 15-16 and Insurers Combined Exhibits I-1 - I-8.

Conclusion

WHEREFORE, for the reasons set forth herein, the Plan Proponents object to the proposed trial exhibits and have attached as **Exhibit A** specific objections to each exhibit.

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